

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:
JAN McMULLEN

NO. 99-44

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between JAN McMULLEN, through her attorney, FREDRIC C. TAUSEND, and the EXECUTIVE ETHICS BOARD ("Board") through BRIAN R. MALARKY, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

1. Jan McMullen is a former ESD employee. ESD hired Ms. McMullen in 1984 and she resigned on January 23, 1997, but continues to be a state employee in another state agency. While employed by ESD, Ms. McMullen was assigned to ESD's Contracts and Rules unit (Contracts Office). The Board's jurisdiction over the respondent and the conduct at issue began on January 1, 1995.

2. ESD hired Jeff Gonzales in 1983 as the full time Contracts and Regulations Administrator. Mr. Gonzales managed the Contracts Office. Mr. Gonzales hired Ms. McMullen in 1984 as a Contracts Specialist. In 1988, Mr. Gonzales took a voluntary demotion to a Contracts Specialist 3, Step K (top step) in order to work part time (.6 FTE). In 1988, Ms. McMullen became the Contracts and Regulations Administrator and supervisor of Mr. Gonzales. Mr. Gonzales resigned January 28, 1997.

3. As Mr. Gonzalez's supervisor, Ms. McMullen exercised discretionary authority regarding Mr. Gonzales's daily working conditions, including but not limited to, weekly time reporting, job retention, performance reviews, salary, and work assignments.

4. Mr. Gonzales and Ms. McMullen and their spouses entered into a real estate partnership on June 30, 1990. The partnership owns and operates property for the production of income and to provide a real estate investment to the partners. The real property is located in Portland, Oregon and each partner holds a 25% partnership interest. Each partner paid \$9,250.00 (\$18,500.00 per family) towards ownership with income, losses, tax benefits or credits shared equally. They continued to jointly own the property in 1995 when the ethics law took effect. This joint ownership still existed in January 1997 when Ms. McMullen left her position at the Employment Security Department and ceased being Mr. Gonzales supervisor. Ms. McMullen asserts that during the years at issue (1995 through January 1997) she and Mr. Gonzales tried to sell the partnership property with no success.

5. Ms. McMullen denies giving Mr. Gonzales preferential treatment in the form of promotions or salary increases and asserts that the only promotions or salary increases she gave Mr. Gonzales were those mandated by the legislature.

B. APPLICABLE LAW

1. RCW 42.52.020 states:

No state officer or employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's duties.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 have been reviewed. In the case at hand it is an aggravating factor that: (1) the alleged violation continued from 1995 through January 1997 (WAC 292-120-030(2)(a)); (2) the alleged violation could reduce the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); (3) the partnership involved potential personal gain to Ms. McMullen

(WAC 292-120-030(2)(f)); and, (4) Ms. McMullen incurred no other sanctions as a result of her alleged violations (WAC 292-120-030(3)(f)).

2. It is a mitigating factor that: (1) the partnership agreement and the ownership of the real property began five years before the enactment of RCW 42.52; (2) Ms. McMullen and Mr. Gonzales attempted to sell their jointly held property between 1995 and 1997; (3) Ms. McMullen has cooperated in the Board's investigation of this matter (WAC 292-120-030(4)(e)); (4) Mr. Gonzales received no preferential treatment and his salary increases were mandated by the legislature; and (5) Ms. McMullen's conduct in this matter was unintentional and unknowing.

C. RESOLUTION

1. Jan McMullen maintains that the alleged violation of RCW 42.52.020 was unknowing and unintentional, but agrees to settle and resolve the charged violation as hereinafter provided.

2. Ms. McMullen agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) on the condition that Ms. McMullen complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW while employed by the State of Washington. The \$500.00 amount is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board. Failure to make timely payment will cause the entire amount of the civil penalty of \$1,000.00 to become due and payable within ten (10) days of the missed payment.

D. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jan McMullen and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2), which states in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

D. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Jan McMullen from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty owed in the amount of \$1,000.00 (\$500.00 suspended), and compliance with all other conditions of this Stipulation. Jan McMullen agrees to release and discharge the Board, its officers, agents, and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Order.

2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Jan McMullen and the Employment Security Department, the State of Washington, or other third party, which may now be in existence or may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

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E. CERTIFICATION

I, JAN McMULLEN, hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.

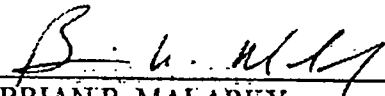
JAN MCMULLEN
Respondent

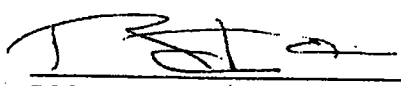
FREDRIC C. TAUSEND
Attorney for Respondent

Date

Date

Stipulated to and presented by:


BRIAN R. MALARKY
Executive Director


RICHARD A. McCARTAN
Assistant Attorney General

July 9, 2001

7/17/01

Date

Date

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E. CERTIFICATION

I, JAN McMULLEN, hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.


Jan McMullen
JAN MCMULLEN
Respondent

July 11, 2001
Date

Fredric C. Townsend
FREDRIC C. TOWNSEND
Attorney for Respondent

July 10, 2001
Date

Stipulated to and presented by:


BRIAN R. MALARKY
Executive Director

Date July 9, 2001

RICHARD A. McCARTAN
Assistant Attorney General

Date _____

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II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

X ACCEPTED in its entirety;


 REJECTED in its entirety;

_____ *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

DATED this 13th day of July, 2001.

James M. Vaché
James M. Vaché, Chair

Laquita Fields
Laquita Fields, Vice Chair


Sutapa Basu, Member

Marilee Scarbrough, Member

Cheryl LG Rohret
Rev. Cheryl Rohret, Member

I, _____, accept/do not accept (circle one) the proposed modification.

Respondent

Date _____

Attorney for Respondent

Date _____